

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of the
Minnesota Department of Commerce Against
Vonage Holdings Corp. Regarding Lack of
Authority to Operate in Minnesota

ISSUE DATE: November 30, 2004

DOCKET NO. P-6214/C-03-108

ORDER STAYING ORDER OF
SEPTEMBER 11, 2003

PROCEDURAL HISTORY

On July 15, 2003, the Department of Commerce (DOC) filed a complaint against Vonage Holdings Corporation (Vonage) alleging, among other things, that Vonage has offered and continues to furnish telephone services in Minnesota, including local exchange service and long distance service, without first obtaining a certificate under Minn. Stat. §§ 237.16 and 237.74, for those services. The complaint further alleges that the manner in which Vonage provides local service violates Minnesota law in that it fails to provide adequate 911 service.

On September 11, 2003, the Commission issued its ORDER FINDING JURISDICTION AND REQUIRING COMPLIANCE. This Order required that Vonage comply with Minnesota Statutes and Rules relating to the offering of telephone service in Minnesota, including certification and provisioning of 911 service within 30 days of the Order. It also required Vonage to remit 911 fees to the Department of Administration for the period when it served Minnesota customers but did not pay such fees.

On September 22, 2003, Vonage filed a Request for Declaratory Ruling with the FCC. On September 23, 2003, Vonage filed a Complaint in the United States District Court, District of Minnesota, seeking, inter alia, preliminary and permanent injunctive relief from the Commission's Order. On October 1, 2003, Vonage filed with the Commission its Motion for Stay of the Commission's September 11, 2003 Order.

On October 7, 2003, the United States District Court, District of Minnesota, granted Vonage's request for a permanent injunction of the Commission's September 11, 2003 Order. On October 13, 2003, the Commission issued its ORDER STAYING ORDER OF SEPTEMBER 11, 2003.

The Commission appealed the District Court's grant of a permanent injunction to the United States Eighth Circuit Court of Appeals. During the pendency of the appeal, the FCC released its November 12, 2004, Memorandum Opinion and Order *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public*

Utilities Commission, WC Docket No. 03-211 (FCC Order). The FCC Order determined, in relevant part, that ...the Minnesota Commission may not require Vonage to comply with its certification, tariffing or other related requirements as conditions to offering DigitalVoice in that state.

Oral argument to the 8th Circuit was held on November 17, 2004. The issue of what happens to the District Court s permanent injunction in light of the FCC Order was taken under advisement by the 8th Circuit Court. Supplemental submissions to the 8th Circuit are to be filed on December 2, 2004.

This matter came before the Commission on November 30, 2004.

COMMISSION ACTION

The Commission, on its own motion, modifies its ORDER STAYING ORDER OF SEPTEMBER 11, 2003, as indicated in this Order.

ORDER

1. The Commission s ORDER FINDING JURISDICTION AND REQUIRING COMPLIANCE of September 11, 2003 is hereby stayed until such time that the permanent injunction issued by the United States District Court, District of Minnesota, on October 7, 2003, is lifted.
2. Regardless of whether any court-issued injunction is in place, the Commission s ORDER FINDING JURISDICTION AND REQUIRING COMPLIANCE of September 11, 2003 is hereby stayed until such time, and to the extent, that the FCC Order is subsequently modified by Congress, the FCC, or by a Court of appropriate jurisdiction pursuant to 47 U.S.C. § 2342 (commonly referred to as the Hobbs Act).
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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